

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DAVID BARRAGAN, et al.,

Plaintiffs,

v.

ROBIN LANDRY, Individually, and as an
employee of the Division of Child Protective
Services of the State of Nevada and agency of
the STATE OF NEVADA existing under the
laws of the STATE OF NEVADA, County of
WHITE PINE; THE STATE OF NEVADA;
and DOES I-X, inclusive,

Defendants.

03:06-CV-00310-LRH-VPC

ORDER

Before the court is Plaintiffs' motion for relief (#100¹). On July 29, 2008, this court filed an order denying Plaintiff's motion for reconsideration (#99). In that order, the court construed Plaintiffs' motion for reconsideration as pursuant to Federal Rule of Civil Procedure 60 instead of pursuant to Rule 59(e) because the motion was filed more than ten days following the grant of summary judgment against Plaintiffs.² (July 29, 2008, Order (#99) at 3 n.4.) Consequently, the motion for reconsideration did not toll the time for appeal as it would have under Rule 59(e).

¹Refers to court's docket number

²A Rule 59(e) motion must be filed within ten days of the entry of judgment. Fed. R. Civ. P. 59(e).

1 *United States v. Nutri-cology, Inc.*, 982 F.2d 394, 397 (9th Cir.1992).

2 Plaintiffs now correctly argue that the period between entry of judgment and the filing of
3 the motion for reconsideration was not longer than ten days. Under Rule 60(a), “[t]he court may
4 correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in
5 a judgment, order, or other part of the record.” Fed. R. Civ. P. 60(a). Here, the court granted, and
6 the clerk entered, summary judgment against Plaintiffs on March 27, 2008 (#95). On April 10,
7 2008, Plaintiffs filed their motion for reconsideration. Rule 6(a) provides that courts should
8 exclude weekends and the day of the entry of judgment when calculating the period of time allowed
9 for a Rule 59(e) motion. *See* Fed. R. Civ. P. 6(a). Excluding these days, Plaintiffs filed their
10 motion for reconsideration on the tenth day allowed by Rule 59(e). Therefore, the motion was
11 timely under Rule 59(e), and the time for appeal is consequently tolled.

12 Notably, since the analyses under both Rule 59(e) and Rule 60 are identical, *Jones v.*
13 *Aero/Chem Corp.*, 921 F.2d 875, 878 (9th Cir. 1990), the court’s correction does not affect the
14 substance of the order.

15 IT IS THEREFORE ORDERED that Plaintiffs’ motion for relief (#100) is hereby
16 GRANTED. The court’s order (#99) is modified accordingly and Plaintiffs’ time for appeal is
17 tolled until entry of this order.

18 IT IS SO ORDERED.

19 DATED this 7th day of August 2008.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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